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Supreme Court of the United States

October Term, 1943

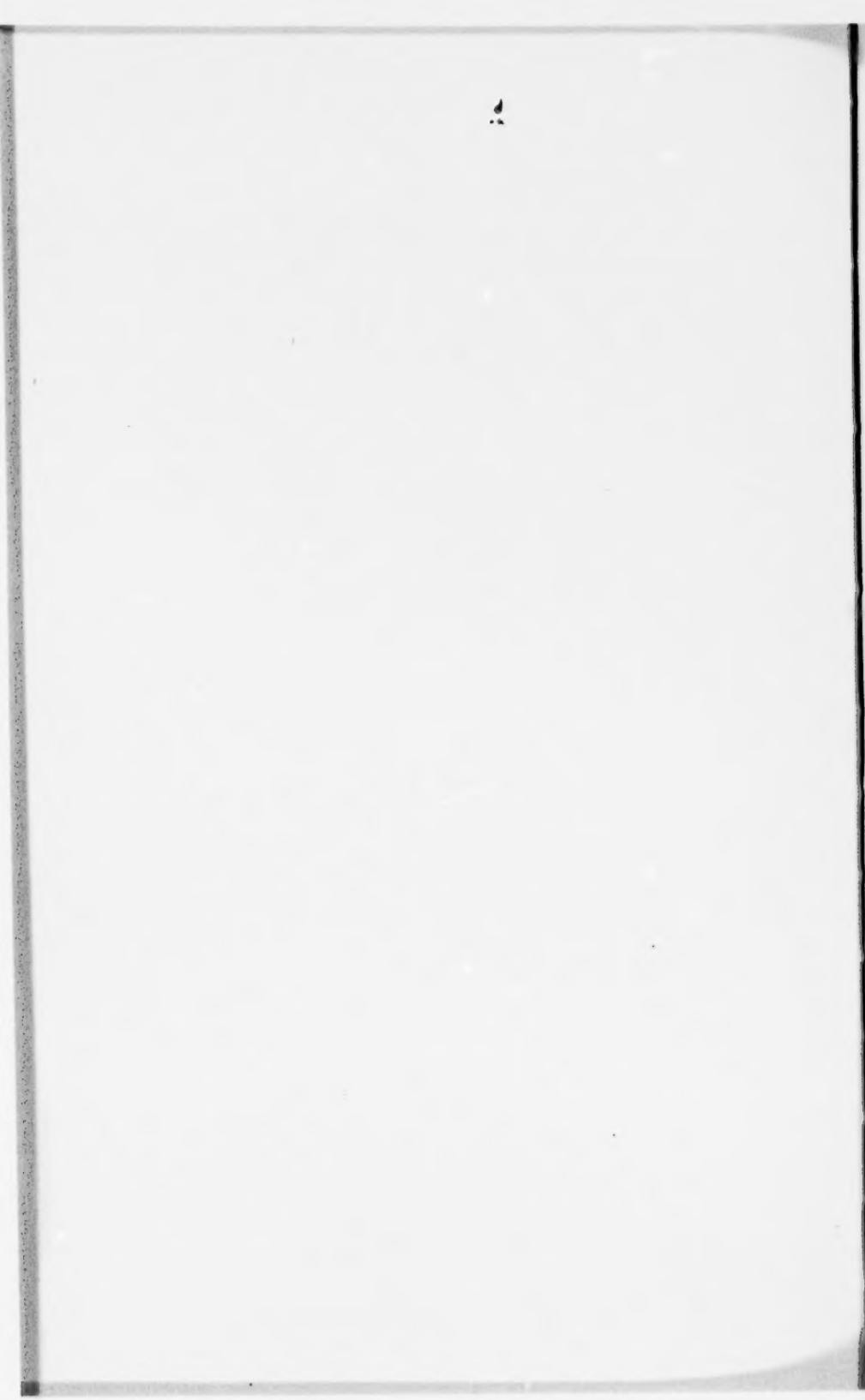
No. 131

EASTERN WINE CORPORATION,
Petitioner,
vs.

G. H. MUMM CHAMPAGNE (SOCIETY VINICOLE DE
CHAMPAGNE, SUCCESSORS) AND ASSOCIATES INCOR-
PORATED, AND SOCIETY VINICOLE DE CHAMPAGNE,
Respondents.

**PETITION OF EASTERN WINE CORPORATION
FOR A WRIT OF CERTIORARI TO THE CIRCUIT
COURT OF APPEALS FOR THE SECOND CIRCUIT,
WITH BRIEF IN SUPPORT THEREOF.**

SAMUEL E. DARBY, JR.,
Counsel for Petitioner.



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vs.

G. H. MUMM CHAMPAGNE (Society Vinicole de Champagne, Successors) AND ASSOCIATES INCORPORATED, and SOCIETY VINICOLE DE CHAMPAGNE,

Respondents.

PETITION OF EASTERN WINE CORPORATION FOR A WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

*To the Honorable, the Chief Justice and Associate Justices
of the Supreme Court of the United States:*

Your Petitioner, Eastern Wine Corporation, respectfully prays for a writ of certiorari to the Circuit Court of Appeals for the Second Circuit to review the judgment of that Court entered on the 27th day of April, 1944.

A transcript of the record in the case, including the proceedings in said Circuit Court of Appeals, is furnished herewith in accordance with the rules of this Court.

Summary and Short Statement of the Matter Involved.

1. Plaintiff, Society Vinicole de Champagne, is a corporation of France and hereinafter will be referred to as

"Foreign Plaintiff". Since 1883 it (or its predecessor) has manufactured and sold the well known "Mumm" champagnes, to one quality of which it applied the trade-mark comprising the words "Cordon Rouge".

2. Foreign Plaintiff effected a number of trade-mark registrations for its "Cordon Rouge" champagne, with only two of which (Nos. 177,419 and 312,653) we are here concerned. They each comprise the words "Cordon Rouge" printed on a red stripe diagonally extending across a rectangular white field.

3. In 1934 Foreign Plaintiff caused to be incorporated in the State of Delaware co-plaintiff G. H. Mumm Champagne (Society Vinicole de Champagne, Successors) and Associates Incorporated, and since then has owned and now owns 53% of the stock therein, the remainder of the stock being owned by "different foreign associates abroad" (R. 38-39). This Delaware corporation will hereinafter be referred to as "Domestic Plaintiff".

4. Since its creation in 1934 Domestic Plaintiff has purchased outright the Mumm champagnes from Foreign Plaintiff—including the Cordon Rouge champagne—and has resold them in the United States.

5. The relationship between Domestic Plaintiff and Foreign Plaintiff is expressed by a written agreement dated January 1, 1938 (R. 70) whereby Domestic Plaintiff purchases champagnes exclusively from Foreign Plaintiff; and the latter sells its champagnes for resale in the United States solely to Domestic Plaintiff. With reference to the trade-marks of Foreign Plaintiff, the agreement provided (R. 70):

"4. The producer [Foreign Plaintiff] will protect and enforce its trade-marks in the United States

of America against any infringement thereof, and the importer [Domestic Plaintiff] will promptly acquaint the producer of any conduct by competitors believed to constitute an infringement of producer's rights, and of all facts in respect thereto, together with recommendations as to proposed procedure for the producer's instructions and disposition, and any expenses for legal proceedings consequent thereupon will be borne by the producer for the protection of the producer's rights."

6. In 1939 this agreement was changed, by mutual consent, by creating another purchaser in the United States (in the Pacific Coast area) of the champagnes of Foreign Plaintiff (R. 45).

7. Petitioner, Eastern Wine Corporation, was incorporated in the State of New York in 1934, and since then has been a purveyor of domestic champagne for which it adopted the trade-mark "Chateau Martin". Since about January 1941 Petitioner used the trade-mark "Chateau Martin" printed in gold letters on a red stripe extending diagonally across a white field.

8. The complaint, verified only by Domestic Plaintiff, was filed in this case by Domestic Plaintiff as the asserted "agent" of Foreign Plaintiff on November 13, 1942, charging infringement of *Foreign Plaintiff's* trade-marks by Petitioner's use of its "Chateau Martin" labels, as well as unfair competition with Domestic Plaintiff *by reason of said trade-mark infringement* (R. 7). Foreign Plaintiff, though named as plaintiff in the action, did not sign or verify the complaint and did not authorize the filing thereof. Indeed, because of the then enemy alien status of Foreign Plaintiff it is the conceded fact that Domestic Plaintiff has had no communication of any kind or nature whatsoever with Foreign Plaintiff relative to this case (R. 41).

9. Petitioner answered the complaint, denying trademark infringement and unfair competition because thereof, asserting that Foreign Plaintiff as owner of the trade-marks was a necessary and indispensable party to the suit so that its absence as a party was fatal to the case; and asserting that by reason of the fact that Foreign Plaintiff was in the status of an enemy alien under the Trading with the Enemy Act (50 U. S. C. A. Appendix 10), any "agency" relationship that may have existed between Domestic and Foreign Plaintiffs was abrogated, wherefore at the time of filing the complaint and at all times thereafter Domestic Plaintiff was wholly without legal or actual authority to institute or to maintain this suit in Foreign Plaintiff's behalf.

10. On the pleadings and a pre-trial deposition of the President of Domestic Plaintiff both parties moved for summary judgment, and the motions were argued and briefed.

11. On October 14, 1943 the District Court filed its opinion (R. 21) in which it was concluded that Foreign Plaintiff was an enemy alien and that Domestic Plaintiff was an "agent" of Foreign Plaintiff; and that despite these conclusions the complaint could be maintained.

12. Findings of Fact and Conclusions of Law consistent with the opinion were entered on December 13, 1943 (R. 28, 30), and Interlocutory Judgment was entered on the same day (R. 31).

13. On April 27, 1944 the Court of Appeals for the Second Circuit affirmed the judgment of the District Court.

14. Because of the important and far reaching effect of the decision in this case, which vests a party to a mere sales agreement with the legal attributes of an "agent" empowered to sue for infringement of a trade-mark owned by an enemy alien and thereby maintains alive a commercial

relationship and agreement expressly abrogated by the Trading with the Enemy Act, this petition is presented.

Questions Presented.

1. May a suit for trade-mark infringement, and for unfair competition because of trade-mark infringement, be maintained in the absence of the owner of the trade-mark as a party litigant?
2. Does a mere non-exclusive commercial sales agreement vest an enemy alien owned domestic corporation with the right or authority to maintain a suit for alleged infringement of trade-marks owned by the enemy alien?
3. Is not a mere non-exclusive commercial sales agreement between a domestic corporation and an enemy alien expressly abrogated by the Trading with the Enemy Act?

Reasons Relied Upon for the Grant of a Writ of Certiorari.

The discretionary power of this Court is invoked upon the following grounds:

1. Because the Court of Appeals for the Second Circuit has rendered a decision in this case which is believed to be untenable in view of the applicable decisions of this Court.
2. Because the Court of Appeals for the Second Circuit has rendered a decision which is believed to be untenable because of the provisions of the Trading with the Enemy Act.
3. Because the issues here presented are of great public importance in that they relate to and are based upon the question of the propriety, during wartime, of the utilization of our Courts by enemy aliens for the prosecution of monetary claims against citizens of the United States.

WHEREFORE your petitioner respectfully prays that a writ of certiorari issue out of and under the seal of this Court directed to the United States Court of Appeals for the Second Judicial Circuit commanding said Court to certify and send to this Court, on a date to be designated, a full transcript of the record of all proceedings of the Court of Appeals had in this cause, to the end that this cause may be reviewed and determined by this Court as to the questions herein presented, and that the judgment of the Court of Appeals be reversed, and that petitioner may be granted such other and further relief as may seem proper.

Respectfully submitted,

SAMUEL E. DARBY, JR.,
Counsel for Petitioner.

Dated: New York, New York,
June 2, 1944.